

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Richard Fernandez,

Plaintiff,

10 Civ. 9011 (ALC) (JCF)

- against -

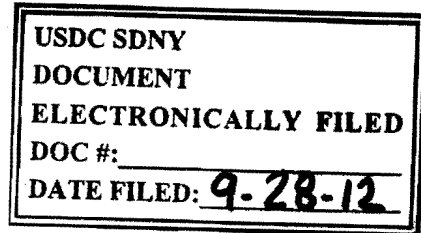
ORDER ADOPTING REPORT
AND RECOMMENDATION

Supt. William A. Lee,

Defendants.
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ANDREW L. CARTER, JR., United States District Judge:

On November 12, 2010, Plaintiff Richard Fernandez ("Plaintiff" or "Petitioner") filed a Petition for a Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254. In his Petition, Plaintiff challenges his convictions for Assault in the First Degree, and two counts of Robbery in the Second Degree following a jury trial in New York State Supreme Court, New York County. Plaintiff contends that: (1) he received ineffective assistance of trial counsel; (2) his delayed arraignment violated his right to counsel; (3) he was arrested without probable cause, and that illegal arrest tainted all of the prosecution's evidence; (4) the trial judge erred in not suppressing his post-Miranda statements as tainted by his earlier statement, which had been



suppressed; and (5) the trial judge erred in denying his request for a jury charge on the voluntariness of his statements.

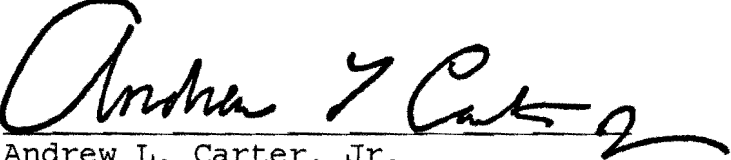
This matter was referred to United States Magistrate Judge James C. Francis pursuant to an Order dated February 17, 2012. On April 25, 2012, Petitioner applied for a stay of his Petition while he exhausted his claims of ineffective assistance of counsel and arraignment delay through a writ of *coram nobis* in New York State Court.¹ On May 29, 2012, Defendant Superintendent William A. Lee opposed Plaintiff's Petition and motion for a stay.

After considering the motion, Magistrate Judge Francis issued a Report and Recommendation, dated July 12, 2012, in which he recommended that Plaintiff's application for a stay be denied and that the Petition be denied as well. Plaintiff timely filed his objections. For the reasons articulated in Judge Francis' sagacious Report and Recommendation, Plaintiff's objections are overruled, and the Report and Recommendation is adopted in its entirety.

Dated: New York, New York
September 28, 2012

¹ Petitioner raised his first three claims – illegal arrest, failure to suppress statements, and failure to give a voluntariness instruction – on direct appeal.

SO ORDERED.

A handwritten signature in black ink, reading "Andrew L. Carter, Jr." with a stylized flourish at the end.

Andrew L. Carter, Jr.
United States District Judge